

Bay State Gas Company

D.T.E. 05-27

Attachment DTE-5-14 (e)

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**Fleet Capital Corporation**

One Financial Plaza; 5th Floor  
Providence, Rhode Island 02903-2305

*Lease*  
*31946-28*

January 5, 2005

Mr. Ed Frantz  
Ni Source, Inc.  
200 Civic Center Drive  
Columbus, OH 43215

Re: Lease Schedule: 31946-00028

Dear Mr. Frantz:

Fleet Capital Corporation wishes to thank you for choosing our company for your equipment leasing and financing needs. Enclosed you will find copies of the executed documents, please retain these for reference.

Please forward to my attention, via facsimile, a revised Liability Insurance Certificate, naming Fleet Capital Corporation as Additional Insured and Certificate Holder. This certificate should also show a minimum of \$1,000,000.00 coverage per occurrence.

If we may be of further service to you or if you have any questions, please call our Customer Service line at 1-800-238-3737 and speak with any of our Customer Service Agents.

We appreciate the business relationship we have developed and look forward to serving you in the years to come.

Sincerely,

Gina M. Cabral  
Operations Consultant

Enclosure(s)

Bay State Gas Company  
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## PAY PROCEEDS LETTER

One Financial Plaza  
Providence, Rhode Island 02903-2448

We, the undersigned, hereby authorize Fleet Capital Corporation to pay the following Payee(s) from the proceeds of financial accommodations provided to us by FCC as evidenced by that certain TRUE LEASE SCHEDULE No. 31946-00028 dated as of DECEMBER 14, 2004. Make disbursements directly to said Payee(s) as follows:

PAYEE	Amount of Payment
<u>BAY STATE GAS COMPANY</u>	<u>\$2,536,278.00</u>
Bank Name: <u>Fleet Bank</u>	
Bank City/State: _____	
ABA/Routing Number: <u>011000138</u>	
Account Name: <u>Bay State Gas</u>	
Account Number: <u>23430000</u>	

TOTAL: \$2,536,278.00

Dated as of: DECEMBER 30, 2004

BAY STATE GAS COMPANY

By: [Signature]

Name: David J. Vajda

Title: Vice President and Treasurer

Bay State Gas Company

D.T.E. 05-27

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**LEASE SCHEDULE NO. 31946-00028**  
(True Lease Schedule)

One Financial Plaza  
Providence, Rhode Island 02903-2448

Lessee: BAY STATE GAS COMPANY  
Address: 300 FRIBERG PARKWAY  
WESTBOROUGH, MA 01581

1. This Lease Schedule No. 31946-00028 dated as of December 14, 2004 is entered into pursuant to and incorporates by this reference, all of the terms and provisions of that certain Master Equipment Lease Agreement No. 31946 dated as of OCTOBER 31, 1995 (the "Master Lease"), for the lease of the Equipment described in Schedule A attached hereto. This Lease Schedule shall constitute a separate, distinct and independent lease of the Equipment and the contractual obligation of Lessee. References to the "the Lease" or "this Lease" shall mean and refer to this Lease Schedule, together with the Master Lease and all exhibits, addenda, schedules, certificates, riders and other documents and instruments executed and delivered in connection with this Lease Schedule, all as the same may be amended or modified from time to time. All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Master Lease. By its execution and delivery of this Lease Schedule, Lessee hereby reaffirms all of the representations, warranties and covenants contained in the Master Lease, as of the date hereof, and further represents and warrants to Lessor that no Event of Default, and no event or condition which with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing as of the date hereof.

2. **ACQUISITION COST.** The Acquisition Cost of the Equipment is: \$2,536,278.00.

3. (a) **LEASE TERM.** The Lease Term shall commence on the date hereof and shall continue for a period of 107 months after the Lease Term Commencement Date set forth in the Acceptance Certificate to this Lease Schedule, plus any renewal or extended term applicable in accordance with the terms of the Lease.

(b) **RENTAL PAYMENTS.** In addition to interim rent payable pursuant to Section 2 of the Master Lease, Lessee shall pay Lessor 107 consecutive Rental Payments in the amounts set forth in the schedule below, plus any applicable sales/use taxes, commencing on the Rental Payment Commencement Date set forth in the Acceptance Certificate and MONTHLY thereafter for the remaining Lease Term. Each Rental Payment shall be payable on the same day of the month as the Rental Payment Date in each succeeding rental period during the remaining Lease Term (each, a "Rental Payment Date"):

<u>Number of Rental Payments</u>	<u>Amount of Each Rental Payment</u>
1-53	\$25,842.29
54-107	\$30,336.60

(c) **ADVANCE RENTAL PAYMENT.** Lessee agrees to pay Lessor the first 0 and last 0 Rental Payments, due and payable on the Acceptance Date.

(d) **SECURITY DEPOSIT.** Lessee agrees to make a payment in an amount equal to 0% of the Acquisition Cost of the Equipment, due and payable on the Acceptance Date, to be held by Lessor as a non-interest bearing deposit to secure Lessee's performance under the Lease.

4. **EQUIPMENT LOCATION (S).** The Equipment will be located at the location(s) specified in Schedule A hereto.



Bay State Gas Company  
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5. Lessor will invoice Lessee for all sales, use and/or personal property taxes as and when due and payable in accordance with applicable law, unless Lessee delivers to Lessor a valid exemption certificate with respect to such taxes. Delivery of such certificate shall constitute Lessee's representation and warranty that no such taxes shall become due and payable with respect to the Equipment, and Lessee shall indemnify and hold harmless Lessor from and against any and all liability or damages, including late charges and interest which Lessor may incur by reason of the assessment of such taxes.

6. The Rental Payments may change for Equipment accepted after December 30, 2004

7. Lessee represents that to the best of Lessee's knowledge the applicable recovery period for the Equipment, for purposes of Section 168 of the Internal Revenue Code of 1986, is as set forth in Schedule A hereto.

Dated as of: December 14, 2004

**FLEET CAPITAL CORPORATION**

By: Patricia Smith-Disu  
Name: Patricia Smith-Disu  
Title: Vice President

**BAY STATE GAS COMPANY**

By: David J. Vajda  
Name: David J. Vajda  
Title: Vice President and Treasurer



## SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: True Lease Schedule No.: 31946-00028, Acceptance Certificate and UCC Financing Statement

with: **BAY STATE GAS COMPANY**

Recovery Period: **5 Years**

<u>Qty</u>	<u>Model No.</u>	<u>Misc Description</u>
		<i>Vendor: Itron, Inc.</i>
34,410	ERG-1006-201	ITRON IRT Devices
1	MCI	Mobile Collection System

with all standard and accessory equipment

## FLEET CAPITAL CORPORATION

By: Patricia Smith-Disu

Name: Patricia Smith-Disu  
Vice President

Title: \_\_\_\_\_

## BAY STATE GAS COMPANY

By: David J. Vajda

Name: David J. Vajda

Title: Vice President and Treasurer



## WARRANTY BILL OF SALE

One Financial Plaza  
Providence, Rhode Island 02903-2448

BAY STATE GAS COMPANY ("Seller") of 300 FRIBERG PARKWAY, WESTBOROUGH, MA 01581, in consideration of the sum of \$2,536,278.00 Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, transfer and assign to Fleet Capital Corporation ("FCC") a Rhode Island corporation having its principal office at One Financial Plaza, Providence, Rhode Island 02903, the equipment set forth in Schedule A hereto (the "Equipment").

Seller hereby covenants with and warrants to FCC that Seller is the lawful owner of the Equipment and has the right to sell the Equipment, and that the Equipment is free and clear of all rights, claims, liens, charges, security interests or encumbrances of any other person. Seller will forever indemnify, defend and warrant all of the rights of FCC in and to the Equipment transferred hereunder against the claims and demands of all other persons.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale this 23<sup>rd</sup> day of December, 2004.

## BAY STATE GAS COMPANY

By: Name: David J. VajdaTitle: Vice President and TreasurerState of INCounty of LAKE

Subscribed and sworn before me this 23<sup>rd</sup> day of December.

Corinne B. Johnson  
Notary Public

My Commission expires: 2/15/04

(SEAL)



Bay State Gas Company  
D.T.E. 05-27  
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## SCHEDULE A EQUIPMENT

The following documents are attached to and made a part hereof: Warranty Bill of Sale

with: **BAY STATE GAS COMPANY (31946-00028)**

Recovery Period: **5 Years**

<u>Qty</u>	<u>Model No.</u>	<u>Misc Description</u>
		<i>Vendor: Itron, Inc.</i>
34,410	ERG-1006-201	ITRON IRT Devices
1	MCI	Mobile Collection System

with all standard and accessory equipment

**BAY STATE GAS COMPANY**

By: 

Name: David J. Vajda

Title: Vice President and Treasurer





## ACCEPTANCE CERTIFICATE

One Financial Plaza  
Providence, Rhode Island 02903-2448

This Acceptance Certificate (this "Acceptance Certificate") is attached to and made a part of that certain Lease Schedule No. 31946 - 00028, dated as of December 14, 2004 (the "Lease Schedule"), by and between the undersigned parties. All capitalized terms used herein and not defined herein shall have the meanings set forth or referred to in the Lease Schedule. To the extent the terms set forth in this Acceptance Certificate differ or conflict with any of the terms set forth in the Lease, the terms set forth in this Acceptance Certificate shall control.

1. Lessee acknowledges and agrees that each item of Equipment set forth on Schedule A hereto (collectively, the "Equipment") is hereby unconditionally accepted by Lessee for all purposes under the Lease at the locations specified in Schedule A hereto, and hereby agrees to faithfully perform all of its obligations under the Lease as of the date hereof (the "Acceptance Date").

2. By its execution and delivery of this Acceptance Certificate, Lessee hereby reaffirms all of the representations, warranties and covenants contained in the Lease as of the date hereof, and further represents and warrants to Lessor that no Event of Default, and no event or condition which with notice or the passage of time or both would constitute an Event of Default, has occurred and is continuing as of the date hereof. Lessee further certifies to Lessor that Lessee has selected the Equipment and has received and approved the purchase order, purchase agreement or supply contract under which the Equipment will be acquired for all purposes of the Lease.

3. Lessee hereby represents and warrants that: (a) the Equipment has been delivered and is in an operating condition and performing the operation for which it is intended to the satisfaction of the Lessee.

4. The LEASE TERM COMMENCEMENT DATE is the 30 day of December, 2004.

5. The RENTAL PAYMENT COMMENCEMENT DATE is the 30 day of January, 2005.

6. All terms and provisions of the Lease Schedule shall remain in full force and effect, except as otherwise provided below:

- ACQUISITION COST: \$ \_\_\_\_\_

- LEASE TERM: \_\_\_\_\_ months.

- RENTAL PAYMENTS:	<u>Number of Rental Payments</u>	<u>Rental Payment Amount</u>
	N/A	N/A

- ADVANCE RENTAL PAYMENT (\$): First N/A and last N/A

- SECURITY DEPOSIT: N/A %.

Dated: DECEMBER 30, 2004

Agreed and Accepted:

FLEET CAPITAL CORPORATION

By: Patricia Smith-Disu

Name: Patricia Smith-Disu

Title: Vice President

BAY STATE GAS COMPANY

By: David J. Vajda

Name: David J. Vajda

Title: Vice President and Treasurer



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE  
FIRST SET OF INFORMATION REQUESTS FROM MASSPOWER  
D. T. E. 05-27

Date: July 15, 2005

Responsible: Joseph A. Ferro, Manager Regulatory Policy

MP 1-10      Please provide copies of all documents included in D.P.U. 89-217 in which the Department approved the Agreement.

Response:    Attachment MP-1-10 is the Department order in D.P.U. 89-217 approving the transportation agreement. The numerous documents requested are on file with the Department and were provided to MASSPOWER during the D.P.U. 89-217 proceeding in which MASSPOWER was an Intervenor.



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

Bay State Gas Company  
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Att. MP-1-10  
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November 6, 1990

D.P.U. 89-217

Investigation by the Department upon its own motion as to the propriety of the precedent agreement and the proposed firm transportation agreement between Bay State Gas Company, a Massachusetts corporation, and MASSPOWER, a joint venture.

APPEARANCES: Paul B. Dexter, Esq.  
Lebouef, Leiby, Lamb & McRae  
260 Franklin Street  
Boston, Massachusetts 02110  
FOR: BAY STATE GAS COMPANY  
Petitioner

James M. Shannon, Attorney General  
By: James G. White, Jr., Esq.  
Assistant Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108  
Intervenor

John A. DeTore, Esq.  
Timothy Ferris, Esq.  
Keohane, DeTore & Keegan  
21 Custom House Street  
Boston, Massachusetts 02110  
FOR: MASSPOWER, joint venture,  
and MASSPOWER, Inc.  
Intervenor

I. INTRODUCTION

On September 28, 1989, Bay State Gas Company ("Bay State" or "Company") filed with the Department of Public Utilities ("Department") a firm transportation agreement ("Agreement") between Bay State and MASSPOWER, a joint venture,<sup>1</sup> for approval pursuant to G.L. c. 164, § 94. The Department, on its own motion, opened an investigation into the propriety of the proposed Agreement and designated Jeffrey Leupold, Esq., as hearing officer. Technical work was performed by Andrew Greene and Linda Latham of the Department's Rates and Research Division.

The Attorney General of the Commonwealth of Massachusetts ("Attorney General") intervened in the proceeding. The Department granted the petition to intervene filed by MASSPOWER, Inc., a general partner in the MASSPOWER joint venture, on its own behalf and on behalf of MASSPOWER. The Department scheduled a hearing at its offices on June 15, 1990. At the hearing, Bay State made return of service certifying compliance with the Department's Order of Notice.

The Company sponsored the testimony of Charles T. Ellis, Bay State's senior vice president responsible for gas supply, marketing and sales, regulatory affairs, and public affairs

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<sup>1</sup> The organizational structure of the joint venture and the identity of the parties to the joint venture is set forth in Section II.B, infra.



(Exh. BSG-1). James A. Kekeisen, of J. Makowski Company, Inc.'s gas development group, testified on behalf of MASSPOWER (Exh. MP-1). The Department marked and entered 64 exhibits into the record.

On June 15, 1990, Bay State and the Attorney General filed a joint motion requesting that the Department approve the Stipulation of Issues by and Between Bay State Gas Company and the Attorney General of the Commonwealth of Massachusetts ("Stipulation"). Under the Stipulation, Bay State and the Attorney General agreed that the Department's approval of the Agreement would not constitute a determination by the Department on the following cost issues associated with Bay State's proposed service to MASSPOWER: (1) the reasonableness of the Company's decision to incur the costs; (2) the amount of the costs; (3) the proper allocation of the costs; and (4) the recoverability of the costs (Stipulation, pp. 2-3). Further, the Stipulation provides that the Department shall not be precluded from determining in any future Bay State rate case that costs incurred by Bay State in rendering service under the Agreement are not recoverable from firm ratepayers. The Stipulation acknowledges that if Bay State cannot recover such costs from MASSPOWER or its own firm customers -- by reason of the terms of the Stipulation or the Agreement or any subsequent Bay State rate case -- its stockholders may be forced to bear such costs (id.).

On June 21, 1990, the Department approved the joint motion, thereby accepting the Stipulation.

## II. BACKGROUND

### A. Description of the MASSPOWER Project

MASSPOWER is planning to build a 240 megawatt ("MW") natural-gas-fired cogeneration facility at the Monsanto Chemical Company industrial complex at Indian Orchard in Springfield, Massachusetts (Exh. MP-1, p. 2). The facility is scheduled to begin commercial operation in the third quarter of 1992 (id., p. 3). MASSPOWER has secured a total of 25 million cubic feet per day ("MMcf/d") of gas supplies from Canadian suppliers and another 25 MMcf/d from Distrigas of Massachusetts ("DOMAC") (id., p. 4). MASSPOWER has also negotiated the necessary transportation agreements to deliver the DOMAC and Canadian gas into the Tennessee Gas Pipeline Company ("Tennessee") system, for delivery to Monson, Massachusetts (id.). Under the proposed Agreement, Bay State would provide the remaining transportation link to the MASSPOWER facility by constructing a pipeline connection that would run from the point of receipt on the Tennessee pipeline, near Monson, to the Monsanto site (Exh. DPU-1, p. 2). The line would also be used to serve the towns of Monson and Palmer, neither of which presently has gas service (Company Brief, p. 5).<sup>2</sup>

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<sup>2</sup> Bay State was given authorization to serve the towns of Monson and Palmer in Bay State Gas Company, D.P.U. 87-46 (1987) and Bay State Gas Company, D.P.U. 87-62 (1987).

### B. Organizational Structure of MASSPOWER

MASSPOWER is a joint venture consisting of MASSPOWER, Inc. (a wholly owned subsidiary of J. Makowski Company, Inc.); MP Cogen, Inc. (an affiliate of General Electric Company ("GE")); Sycamore Power (an affiliate of the Bechtel Corporation ("Bechtel")); Granite State Gas Transmission, Inc. ("Granite State"); and Tenneco Gas Marketing Company (an affiliate of Tennessee). MASSPOWER, Inc. is a 30 percent owner in the project. Each of the other four parties owns 17.5 percent of the venture (Exh. DPU-6). Each party receives profits in proportion to its percentage ownership (Exh. DPU-7). A management committee which includes representatives from J. Makowski Company, Inc., Bechtel, GE, Tenneco, and Granite State makes the day-to-day operating decisions (Exh. DPU-6).

Bay State has ties to this project beyond its role as supplier of transportation services. Granite State (a 17.5 percent owner) is a subsidiary of Northern Utilities, which is itself a subsidiary of Bay State Gas Company. Any profits earned by Granite State would thus accrue to Bay State stockholders. In addition, Mr. Ellis of Bay State is also the president of Granite State, and represents Granite State on the MASSPOWER management committee (Exh. DPU-6).

### C. Terms of the Agreement

Obligations under the terms of the Agreement would commence once the MASSPOWER cogeneration facility begins commercial operation, and last for twenty years (Exh. DPU-1, attachment A,



art. 2). The maximum daily transportation volume ("MDTV") would be 50,000 million British thermal units ("MMBtu") per day, and MASSPOWER would pay a monthly demand charge of \$4.167/MMBtu (id., art. 4, art. 6). There would be no variable transportation charge because MASSPOWER was interested in keeping its variable costs as low as possible in order to maintain a higher position in the electric generation dispatch order of the New England Power Pool (Exh. DPU-2, p. 2).

MASSPOWER would be responsible for notifying Bay State daily regarding the natural gas volumes needed on the next day (Exh. DPU-1, attachment A, art. 9). Bay State's gas dispatching center would then forward the request to MASSPOWER's supplier and/or transporting pipeline (id.). If MASSPOWER desired more than 50,000 MMBtu on any given day, then Bay State would try to transport additional volumes on an interruptible basis for \$0.137/MMBtu (id., art. 4, art. 6). These firm and interruptible rates would be adjusted, according to a pre-set formula, following any Department-approved increases in Bay State's non-gas cost of service for firm customers (id., art. 6).<sup>3</sup>

Whenever MASSPOWER's use of gas differed from the volumes it ordered for the day, the following provisions would be applied:

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<sup>3</sup> In addition to the firm and interruptible transportation services provided by the Agreement, MASSPOWER testified that it is possible that MASSPOWER may seek interruptible gas sales services from Bay State in the future (Exh. MP-1, p. 5).

(1) if the quantity used were greater than the volumes ordered from suppliers ("overtake"), but less than the MDTV, Bay State would bill the excess volumes at Bay State's marginal cost; (2) if the quantity used were greater than the MDTV, MASSPOWER would pay the marginal cost for each unit in excess of the volumes ordered, plus pay the Company's 100 percent load-factor transportation rate for all volumes over the MDTV;<sup>4</sup> (3) if the quantity used were less than ordered from suppliers ("undertake"), Bay State would use its best efforts to assist MASSPOWER in working off the imbalance (e.g., Bay State might offer to buy the surplus gas at a mutually agreeable price) (id., art. 10).

D. Development of the Firm Transportation Rate

The Company's witness stated that MASSPOWER had two options available to transport its gas from the Tennessee pipeline to the project site (Exh. BSG-1, p. 3). Mr. Ellis testified that MASSPOWER could have constructed its own pipeline connection, or asked Bay State to construct the connection (id.). He stated that if MASSPOWER constructed its own pipeline connection, the project would bypass Bay State's system, and deprive the Company

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<sup>4</sup> In Bay State Gas Company, D.P.U. 89-81 (1989), the Company proposed firm transportation rates. During the course of hearings, Bay State developed quasi-firm transportation rates which are presently under review by the Department.

of potential revenues. According to the Company's witness, in order to avoid a bypass Bay State had to offer MASSPOWER a transportation rate that was less than what the project could realize if it built its own pipeline (id., pp. 3-4).

The MASSPOWER project would be eligible for the proposed quasi-firm transportation rate T-52, and the Company determined that under this rate MASSPOWER would incur annual transportation costs of approximately \$9.955 million (Exh. DPU-27). Bay State estimated that if MASSPOWER built its own line, MASSPOWER would incur annual transportation costs of approximately \$2.6 million, which translates to a monthly demand charge of \$4.40/MMBtu (Exh. DPU-2, p. 2).<sup>5</sup> Mr. Ellis stated that because the proposed quasi-firm rate would cost MASSPOWER nearly four times more than its other option, the quasi-firm transportation rate was clearly not competitive (Exh. BSG-1, p. 4). Bay State asserted that the threat of being bypassed by MASSPOWER was very real, and that in order to prevent the bypass the Company would have to offer a more competitive price (id., pp. 4-5). The Company asserted that it was necessary for the Company to develop a transportation rate that was less than the transportation costs that MASSPOWER would incur by building its own pipeline, but

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<sup>5</sup> Bay State estimated that MASSPOWER could build its own pipeline for approximately \$12 million, and based on a 22 percent carrying charge, incur an annual cost of approximately \$2.6 million (id.).



greater than its own estimates of the incremental costs necessary to serve MASSPOWER (id., pp. 3-4).

Bay State estimated that it could build a pipeline to serve MASSPOWER for approximately \$9.4 million (Exh. DPU-23). Including operating and maintenance costs, the Company estimated that its levelized annual revenue requirement for the pipeline would be \$1.64 million over a 20-year period (id.). Bay State translated its estimated annual revenue requirement into a monthly demand charge, compared this figure to its estimate of what MASSPOWER would incur if it built the line itself, and found that its own transportation rate was lower (Exh. BSG-1, p. 4).<sup>6</sup> Based on a ceiling of \$4.40/MMBtu, and its minimum requirement of \$2.73/MMBtu, Bay State negotiated a transportation rate with MASSPOWER equal to \$4.167/MMBtu (id.). The Company stated that the final rate was the product of intense and lengthy negotiations, and was influenced by MASSPOWER's ongoing concern to remain financially viable in the competitive electric generation market (Exh. DPU-2; Exh. DPU-4).

Bay State claimed that special transportation contracts would be appropriate whenever the terms and conditions of existing tariffs did not meet the needs of the end-user, and the

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<sup>6</sup> Bay State's annual revenue requirement of \$1.64 million translates into a monthly demand charge of \$2.73/MMBtu (\$1.64 million / 12 months / 50,000 MMBtu).

Company were faced with the possibility of bypass (Exh. DPU-24). Bay State asserted that it would consider offering transportation services based on incremental cost to other customers in the future, if situations similar to those of the MASSPOWER project arose (*id.*). Bay State stated that any contract developed would have to cover at least the incremental cost to serve the customer. Bay State contended that, as a guiding principle, the pricing of transportation services should provide a net benefit to firm ratepayers without being discriminatory (*id.*). The Company contended that firm ratepayers would benefit from the MASSPOWER contract because it would delay and/or diminish the amount of rate relief sought in future rate cases (Exh. DPU-26). It stated that in a future rate case, the Company would propose to establish MASSPOWER as a separate rate class, and to treat it in the same fashion as off-system sales customers.<sup>7</sup>

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<sup>7</sup> Bay State's off-system sales customers are local distribution companies ("LDCs") who purchase gas on a wholesale basis from the Company. The charges for such service are established pursuant to multi-year contracts that are approved by the Department. For ratemaking purposes, Bay State assigns embedded costs to the off-system class, determines its rate of return, and reapportions to other firm rate classes the difference between the off-system class' proforma earned return and the off-system class' return at the overall average. Bay State Gas Company, D.P.U. 89-81 (1989).

### III. POSITIONS OF THE PARTIES

#### A. Positions of the Parties

##### 1. The Company

The Company asserted that, based on the Company's current cost projections, the Agreement would yield enough revenue to cover the cost of building, siting, and maintaining the pipeline. The Company analyzed cash flows over 51 years (the length of time that the pipeline would be in ratebase) and determined that the Agreement would yield revenues that would provide Bay State an estimated after-tax return of 16.93 percent (Exh. DPU-23). This return would cover the required 11.47 percent return on rate base, as well as provide a small additional return to Bay State's firm customers. According to the Company, this surplus margin to firm customers amounts to a net benefit of \$857,000 per year for the 20-year duration of the Agreement (id.). The Company stated that the present value of the net benefits to firm customers over the life of the equipment would be \$5.7 million (id.). According to the Company, the margin earned would reduce firm rates by an average of \$0.023/MMBtu (id.). .

Bay State argued that the construction of this new pipeline would provide other benefits as well. Mr. Ellis stated that the new line would allow the Company to serve the towns of Monson and Palmer, which are currently without gas service (Exh. BSG-1, p. 5). Mr. Ellis stated that absent a large customer like MASSPOWER, it is unlikely that it would have been economic for



Bay State to serve these two towns in the near future (id.). In addition, Mr. Ellis asserted that the line would allow the Company to increase its interruptible sales to the Massachusetts Municipal Wholesale Electric Company ("MMWEC") by about 2,500,000 MMBtu per year (id., p. 6). Based on the Company's current margin on interruptible sales to MMWEC, Mr. Ellis estimated that Bay State's firm customers would realize an additional benefit of \$1,000,000 per year (id.).

Bay State argues that the project would pose minimal risks to its existing firm customers. Bay State asserts that it would not begin construction of the pipeline until after the cogeneration project had been permitted and financed, and construction had begun (Company Brief, p. 5). The Company's witness also testified that there is little risk that construction of the facility would halt once work has begun, because all major regulatory and financial requirements would have been satisfied (Exh. BSG-1, p. 7). The Company also asserts that if net benefits are not produced by the project, the Stipulation would ensure that ratepayers are protected (Company Brief, p. 6).

B. MASSPOWER

MASSPOWER contends that the Agreement will promote the economically efficient use of society's resources and will also provide benefits to the Company's ratepayers (MASSPOWER Brief, pp. 4-5). MASSPOWER asserts that the Agreement reflects an economically efficient outcome because of the higher cost of a

self-constructed bypass of Bay State's facilities in comparison to the cost of the pipeline to be built by Bay State pursuant to the Agreement. It further contends that the Agreement is consistent with the Department's Gas Transportation Order, D.P.U. 85-178 (1987), which, according to MASSPOWER, encouraged end users to procure competitively priced gas supplies and rely on the LDC to facilitate such deliveries (id., p. 4).

MASSPOWER asserts that the Agreement promotes general policy objectives of the Department and the Commonwealth. MASSPOWER cites the record in suggesting that the Agreement would reduce firm rates by an average of \$0.023 per MMBtu in the first year of the plant's operation (id.). MASSPOWER contends that the Agreement would also further the Commonwealth's stated policy of promoting natural gas to enhance fuel diversity in both electric generation and at the retail level -- particularly in the towns of Monson and Palmer, which would obtain gas service as a result of the MASSPOWER Agreement (id., p. 5).

MASSPOWER contends that it chose to negotiate and contract with Bay State for transportation service based on competitive circumstances, and not because of Bay State's franchise rights (id., p. 8). MASSPOWER argues that the resultant contract price is not discriminatory and is, in fact, the same price offered by Bay State to MMWEC (id., p. 7). MASSPOWER asserts that the Agreement strikes an appropriate balance between MASSPOWER's need to function in a competitive electric power market and Bay

State's obligation to maximize benefits to its firm ratepayers. MASSPOWER concludes that while it has won bids in utilities' resource solicitation procedures, the margin of its success was narrow, and that any increase in the transportation rate from Bay State would damage MASSPOWER's ability to compete effectively (id., p. 8).

#### IV. ANALYSIS AND FINDINGS

##### A. Standard of Review

The MASSPOWER contract was filed pursuant to G.L. c. 164, § 94, which allows the Department to investigate the propriety of sales rates and contracts and to issue Orders as the public interest requires. Traditionally, the natural gas market has been characterized as a natural monopoly and subject to the Department's regulatory goals of (1) promoting economic efficiency, (2) ensuring that the public receives reasonable service at a reasonable cost, (3) matching the economic risks and rewards for both the utility and the customer, and (4) implementing administrative efficiency. Gas Transportation Order, D.P.U. 85-178, p. 11 (1987).

In light of a changing natural gas market, the Department has recognized two groups of customers: core and non-core. Core customers are unable or unwilling to seek alternatives to the monopoly services they receive, and are composed of residential and relatively small commercial users. Non-core customers are made up of large commercial and industrial users that have economic alternatives to natural gas (e.g., switching

to other fuels, procuring their own gas supplies, or relocating). Id., pp. 48-49. While it has always been and remains the Department's intent to effect regulatory policies that benefit the firm ratepayers of an LDC, the Department has also found it appropriate to modify the traditional regulatory framework to reflect and respond to the changes which are significantly increasing the level of competition faced by LDCs. Id., p. 11.

In view of the diversity of services offered by gas companies and the characteristics of the markets where such services are provided, the Department has adopted specific goals and objectives against which the propriety of rate and contract filings is judged. For firm services offered to traditional core ratepayers, the Department has found it appropriate to establish cost-based rates which recover appropriate allocated costs and rely on marginal-cost-based rate designs. See Boston Gas Company, D.P.U. 88-67 (1988). For dual-fuel customers who purchase interruptible services from a gas utility, the Department has found it appropriate to establish rates that reflect the value of service and that recover, at a minimum, the avoidable cost of service. Id.

In the Gas Transportation Order the Department noted that in light of competitive forces affecting the gas industry, the markets served by LDCs can no longer be divided simply between interruptible and firm services. Since the issuance of the Gas Transportation Order, the Department has reviewed a number of

rate and contract filings that, as described in the Gas Transportation Order, cannot be clearly defined as involving either firm or interruptible services. See Boston Gas Company, D.P.U. 90-55 (1990); Colonial Gas Company, D.P.U. 90-210 (1990). In reviewing these contract filings the Department found that the presence of strong competitive market characteristics and the likelihood of potential net benefits for firm customers justified approval of non-traditional pricing terms.

In sum, whether the rates or contracts under review by the Department are for firm, interruptible, or some intermediate form of service, the Department has attempted to ensure that approval of such services would provide benefits for firm ratepayers and meet the Department's public interest objectives.

B. Evaluation of the MASSPOWER Contract

Many of the features of a new and more competitive gas market observed by the Department in the Gas Transportation Order are reflected in the MASSPOWER contract and the Company's proposed regulatory treatment of it. A full analysis of the regulatory implications of this firm transportation service would need to address many issues. In any subsequent filing in which the Company seeks ratemaking treatment for the Agreement, Bay State shall in its initial filing address, inter alia, the following issues: (1) Is the service to be offered to MASSPOWER sufficiently different in cost or in other characteristics from services presently offered under approved rate tariffs that a

separate rate or contract for MASSPOWER is appropriate and necessary? (2) As a firm rate, would the MASSPOWER contract recover allocable embedded costs? (3) If the MASSPOWER rate is not designed to recover embedded costs, but rather to recover incremental costs, what is the proper measure of such incremental costs and what rationale exists for such a departure from traditional firm ratemaking principles? (4) Would the provisions of the contract produce the maximum obtainable net benefits for the Company's existing firm ratepayers over the long term? (5) In view of MASSPOWER's affiliated status with Bay State, would the MASSPOWER contract offer prices or terms and conditions of service that would be regarded as preferential relative to services offered by Bay State to other similarly situated non-affiliated customers?

Pursuant to the Stipulation filed by the Company and the Attorney General and accepted by the Department, these and other matters are deferred for review until a future rate case. The Department's acceptance of the Stipulation reflected our view that if we were to approve the contract, deferral of these issues until a future rate proceeding would not result in any immediate harm or detrimental impact upon ratepayers that could not be fully remedied in a future proceeding. The Stipulation makes abundantly clear that in proceeding with service to MASSPOWER, Bay State's stockholders, and not its ratepayers, bear the full risk of any future Department findings regarding the appropriate costs of the MASSPOWER contract and the recoverability of those costs.



While the Stipulation provides essential ratemaking safeguards for firm ratepayers, the potential for other types of harm to ratepayers resulting from the Company's contract with MASSPOWER has not been fully eliminated by the Stipulation. For example, by agreeing to provide service to MASSPOWER, Bay State would need to construct a pipeline at an estimated cost of \$9.4 million, and incur additional yearly amounts for operating expenses. Should the MASSPOWER project fail following construction of the line, there remains the question of what financial consequences would befall Bay State.<sup>8</sup>

Pursuant to the Stipulation, the Department declines to make an assessment of the likelihood of this outcome or to decide who should bear the costs if this event were to occur. Even if the Company were forced to bear the full costs, however, based on

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<sup>8</sup> In many ways this concern is analogous to the Department's focus in its review of utility financing cases under G.L. c. 164, § 14. In these financing cases, as with this case (because of the Stipulation), the Department generally does not conduct a detailed evaluation of the economics of a given project or the prudence of a specific investment. See Boston Edison Company, D.P.U. 84-245 (1985); Essex County Gas Company, D.P.U. 84-259 (1985). Such issues are often examined in other proceedings before the Department. Instead, the Department usually focuses on whether the proposed financing mechanism would be beneficial for the ratepayers and serve the public interest. The Department has found, however, that extraordinary circumstances may occur where a project to be financed is of great magnitude to the company, and there are overriding reasons for concern about the project's viability or cost-effectiveness. See Fitchburg Gas & Electric Light Co. v. Department of Public Utilities, 394 Mass. 671 (1985).

the magnitude of a \$9.4 million write-off (on an after-tax basis) relative to the Company's 1989 net income of \$21.1 million (1989 Annual Return of Bay State Gas Company), the Department would not anticipate a pronounced degradation of the Company's financial position or its credit worthiness, and therefore, its cost of raising capital. Given the Company's intention to hold off on commencing construction until after MASSPOWER receives its financing, we do not anticipate that these circumstances would arise. Nevertheless, to the extent that such degradation of the Company's financial position were to occur and the Company's cost of capital were to be affected and could be attributed to services provided MASSPOWER, the Department would attempt to shield ratepayers from such harmful effects. See D.P.U. 86-36-F, p. 31 (1989).

While the Department defers consideration of the ratemaking implications of the MASSPOWER contract, the Department notes the Company's assertion that without the prospect of serving MASSPOWER it would not be economically justifiable to serve the towns of Monson and Palmer. In D.P.U. 87-46 and D.P.U. 87-62, the Department has previously determined that the provision of natural gas service to the towns of Palmer and Monson, respectively, would be in the public interest. Thus, the allowance of the MASSPOWER contract would facilitate in a direct way the provision of gas service to these two towns and promote the public interest objectives previously found by the Department in those proceedings.

In view of the above discussion, the Department finds that approval of the MASSPOWER contract would not result in any harm to the Company's ratepayers that would be beyond remedy in the context of a future rate case. Accordingly, the Department will approve the MASSPOWER agreement at this time and review all pertinent ratemaking and regulatory questions concerning it during the Company's next rate case.<sup>9</sup>

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<sup>9</sup> While the Stipulation precludes a determination of prudence or ratemaking treatments in this proceeding, we direct the Company to engage in arm's-length negotiations with MASSPOWER, with whom it is affiliated, and all non-affiliated customers in its transactions. Moreover, we explicitly rely on Bay State's commitment that it stands ready to offer other similarly-situated customers or potential customers price terms and other conditions comparable to those offered to MASSPOWER.

V. ORDER

Accordingly, after due notice, public hearing and consideration, it is


ORDERED: That the Firm Transportation Agreement filed with the Department on September 28, 1989, governing the transportation of natural gas by Bay State Gas Company to MASSPOWER, be and hereby is approved subject to terms of the approved Stipulation.

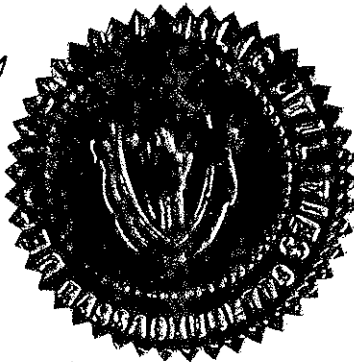
By Order of the Department,

/s/ ROBERT N. WERLIN

Robert N. Werlin, Chairman

A true copy  
Attest;

  
MARY L. COTTRELL  
Secretary



Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

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Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, Order or ruling of the Commission, or within such further time as to the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, Order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said court. (G.L. Ter. Ed. c. 25, s. 5, as most recently amended by c. 485 of the Acts of 1971)

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE  
THIRD SET OF INFORMATION REQUESTS FROM UWUA LOCAL 273  
D. T. E. 05-27

Date: July 15, 2005

Responsible: John E. Skirtich, Consultant (Revenue Requirements)

UWUA-3-6 (Skirtich, p. 6) For each tax year 2000 to 2004, please provide a table showing (i) the company's operating income as reported to the federal government on its tax returns; (ii) the company's operating income as reported to Massachusetts on its tax returns; (iii) the company's operating income as reported to stockholders; (iv) the company's operating income as reported to the FERC; (v) the company's operating income as reported to the Department (if different than (iv)); (vi) the actual federal income and state franchise taxes actually paid to, respectively, the United States and the Commonwealth.

To the extent that the company may claim that any of this information is confidential, please provide the requested information along with a proposed confidentiality agreement. Please do not delay the response to this question.

Response: Table UWUA-3-6 (below) presents the requested information.

<b>Table UWUA-3-6</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Operating Income Per DTE Report	32,193,853	28,244,455	23,054,441	30,560,368	27,185,781
Non Utility Income, Interest Etc.	(17,762,870)	(10,941,386)	(13,955,293)	(1,768,042)	(4,345,339)
Net Income Per DTE Report	14,430,983	17,303,069	9,099,148	28,792,326	22,840,442
Net Income Per Federal Return	14,430,983	17,303,069	9,099,148	28,792,326	
Book vs. Tax Differences	(389,741)	(7,973,150)	3,663,904	(27,023,156)	Not
Taxable Income Per Federal return	14,041,242	9,329,919	12,763,052	1,769,170	File
Tax Liability (at 35%)	4,914,435	3,265,472	4,467,068	619,210	To Date
Taxable Income Per Massachusetts Return					
Per Federal	14,041,242	9,329,919	12,763,052	1,769,170	Not
Adjustments	(735,813)	1,766,906	6,820,110	7,217,731	
Subtotal	13,305,429	11,096,825	19,583,162	8,986,901	File
Apportionment	98.5427%	98.4589%	99.4442%	99.3936%	
Taxable Income for MA	13,111,529	10,925,812	19,474,319	8,932,404	To Date
Tax Liability (at 6.5%)	852,249	710,178	1,265,831	580,606	



COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RESPONSE OF BAY STATE GAS COMPANY TO THE  
THIRD SET OF INFORMATION REQUESTS FROM UWUA LOCAL 273  
D. T. E. 05-27

Date: July 15, 2005

Responsible: John E. Skirtich, Consultant (Revenue Requirements)

UWUA-3-10 (Skirtich, p. 17) Did Mr. Skirtich adjust health insurance expenses to reflect (i) any employees who will be transferred from the NiSource or Bay State payrolls to IBM and (ii) any employees who will be severed from service in connection with the outsourcing to IBM? If "yes," please quantify the adjustments made, with reference to the appropriate pages of his schedules.

Response: No adjustments were made to reflect transfer of employees to IBM.